



TC01750

Appeal number: TC/2011/05253

*Section 98A (2) and (3) Taxes Management Act 1970 – Employer’s End of
Year return –inaccurate P35 resubmitted late – not a reasonable excuse*

FIRST-TIER TRIBUNAL

TAX

CONTRACT ENGINEERING SERVICES (SCOTLAND) LTD Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 18 November 2011 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 7 July 2011, HMRC’s Statement of Case submitted on 1 September 2011 and the Appellant’s Reply dated 11 September 2011

DECISION

5 1. This is an appeal by the Appellant Company Contract Engineering Services (Scotland) Limited against a penalty of £100.00 imposed under s 98A (2) and (3) Taxes Management Act 1970 following the late submission of the Employer's P35 Annual Return for the tax year ending 5 April 2009.

10 2. An employer has a statutory obligation to deliver a Employer Annual Return before 20 May following the end of a tax year in accordance with Regulation 73 of the Income Tax (PAYE) Regulations 2003 and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001. If the full Return does not reach HMRC by 19 May following the end of the tax year HMRC may impose a penalty. Interim penalties are charged under s 98A (2)(a) and (3) TMA where a Return remains outstanding after the due date. The penalties are fixed at £100 per month or part of a month during which the failure continues.

15 3. In this case the Appellant's End of Year Return had to be filed by 19 May 2009. The Appellant submitted its End of Year Return on 17 June 2009 but there was an error in the submission. The Appellant had to wait until HMRC sent out another P35 which the Appellant says was re-submitted on 9 July 2009. HMRC say that the amended End of Year Return was actually submitted on 18 September 2009. The appeal papers contained a copy of a Return which is dated 18 September 2009. There is no copy of a Return dated 09 July 2009.

20 4. A pre-interim final penalty notice of £100 was issued on 10 August 2009. The Appellant says that it did not receive this penalty notice and was unaware of a penalty being issued until receiving a follow up letter from HMRC's Debt Management and Banking department dated 20 April 2011.

25 5. The legislation contained within s 118(2) TMA allows for a penalty to be set aside where a reasonable excuse exists for the late delivery of the End of Year Return. There is no definition in law of reasonable excuse which is a matter to be considered in the light of all the circumstances of a particular case. A reasonable excuse must exist throughout the whole period of default. Normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents the tax-payer from complying with an obligation when they otherwise would have done, is regarded as a reasonable excuse. It is necessary to consider the actions of the Appellant from the perspective of a prudent tax-payer exercising reasonable foresight and due diligence, having proper regard for their responsibilities as provided by legislation.

HMRC's submissions

30 6. HMRC submit that a penalty notice in the sum of £100 was issued to the Appellant on 10 August 2009 and that the notice was sent to the same address as that given in the Tribunal Service documentation. HMRC therefore contend that under TMA 1970 part XI s 115 the notice is deemed to have been validly sent and delivered within the ordinary course of post. HMRC say that they have no record of the notice having been returned undelivered.

35 7. HMRC further contend that, although the Appellant had to submit an amended P35 Return, the amended Return was not submitted until 18 September 2009 and

in any event no explanation has been given as to why the initial and erroneous Return submitted on 17 June 2009 was submitted after the statutory due date.

8. HMRC say that although it did not pursue the penalty until 20 April 2011 this does not negate the liability of the Appellant to a penalty due to late delivery of the Return.

9. Finally HMRC submit that the Appellant has not put forward any unexpected or unusual event either unforeseeable or beyond his control which may have prevented him from complying with his obligation to deliver an End of Year Return no later than 19 May 2009.

10. Taking all these circumstances into account the Appellant has not provided a reasonable excuse for the late delivery of the Company's End of Year Return. Although the Appellant had to await the issue of a further hard copy of the P35 from HMRC, this does not explain or excuse the late delivery of an inaccurate initial Return. Equally, whether or not the Appellant received the penalty notice which HMRC say was issued on 10 August 2009, is irrelevant to the appeal - as is any delay on the part of HMRC in pursuing collection of the penalty.

11. Accordingly the Tribunal concludes that the Appellant has not shown a reasonable excuse for the late delivery of the Employer's End of Year Return. The Tribunal dismisses the appeal and confirms the penalty determination.

12. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

MICHAEL S CONNELL

TRIBUNAL JUDGE
RELEASE DATE: 13 January 2012